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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.2.2006

CORAM
THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

TAX CASE Nos.66 and 176 to 178 of 2000

The Commissioner of Income Tax,
Tamil Nadu III, Madras ..Applicant in all the appeals

Vs.

Smt.C.Susila
Madras ..Respondent in all the appeals

Reference under Section 27(1) of the Wealth Tax Act, 1957 by the Income Tax Appellate Tribunal, `C' Bench, Chennai in R.A. Nos. 205 to 208/Mds/97 in I.T.A. Nos.3072 to 3075/Mds/90 for the assessment years 1983-84 to 1986-87. (ITA NO. 256 and 258/89-90 dated 29.06.1990 and ITA NOS. 260/89-90 and 262/89-90 dated 03.07.1990) respectively on the file of the Commissioner of Income Tax (Appeals) I Madras against

G.I. NO. 7908-S/83-84 84-85; 85-86 and 86-87 dated 28.03.1989 respectively on the file of the Assistant Commissioner of Income Tax, Central Circle 3(1) Madras)

For Applicant :: Mrs. Pushya Sitaraman,
Senior Standing Counsel
For Respondent :: No appearance

J U D G M E N T

(Judgment of the Court was delivered by
P.D.DINAKARAN,J.)

At the instance of the Revenue, the Income-tax Appellate Tribunal has stated a case and referred the following question of law for our consideration:

"Whether on the facts and in the circumstances of the case, the Tribunal

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was justified in cancelling the penalty order passed u/s.271(1)(a) in the case of the partners for the reasons that partnership had already been penalised on this account?".

2.The assessment years involved are 1983-84 to 1986-87. The assessee is a partner in two firms, viz., M/s.K.C.Builders and S.S.Builders, and the penalty proceedings under Section 271(1)(a) of the Act were initiated against both the firms due to the delayed filing of its returns of income and the penalties were also imposed on the two firms for the assessemnt years 1983-84 to 1986-87. The assessee as a partner in the firm also delayed in filing her returns of the income for the assessment years in question and the assessing officer imposed on the assessee penalties of varying amounts for the assessment years 1983-84 to 1986-87 for the delayed filing of returns under Section 271(1)(a) of the Act, which was confirmed by the Appellate Commissioner of Income-Tax. The Income-tax Appellate Tribunal, however took a different view and held that since the firms in which the assessee along with other partners were penalised for late filing of the return, the assessee or any other partner again cannot be penalised under Section 271(1)(a) of the Act for late filing of their individual returns as it would amount to penalising the assessee again for the same offence, viz., late filing of the returns and allowed the appeal. It is against the order of the Income-tax Appellate Tribunal, at the instance of the Revenue, the Income-tax Appellate Tribunal has stated a case and referred the question of law referred to above.

3. Heard the learned Senior standing counsel Mrs.Pushya Sitaraman, for the applicant and who, in her fairness states that the issue involved in the above question of law is answered against the Revenue by this Court in the decision rendered in COMMISSIONER OF INCOME TAX VS.R.SRIDHAR(263 ITR 586). The conclusion has to be reached in each case on a consideration of all the circumstances including the two grounds viz., penalty for concealment of income and penalty for the failure to file the estimate of the advance tax and that it would be unsafe and incorrect to enunciate any principle of general application to all situations.

4. In the instant case, the assessee had only share income from the two firms and so far as the capital gain that was asessed in the hands of the assessee is concerned, that is also the share of the capital gain from the firm.

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In other words, the assessee had no other independent income apart from the share income from the firm. Therefore, we hold that since she had no income other than the share income from the firm, the levy of penalty on the assessee is not justified as without relevant particulars of the share income from the firm, the assessee would not have been in a position to file the return. Further, there is no finding that the assessee was responsible for the delayed finalisation of the accounts of the firm nor is there a finding that she was responsible for the delay in filing the return of the firm. Since the assessee had no other independent income apart from the share income from the firm, the levy of penalty on the assessee was not justified. That apart, without relevant particulars of the share income from the firm, the assessee would not have been in a position to file the return.

5. In view of the above conclusion, we hold that the Appellate Tribunal was justified in cancelling the penalty imposed under Section 271(1)(a) of the Act. Accordingly, we answer the question of law referred to us in the affirmative, against the Revenue and in favour of the assessee.

Msk

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal,
   Rajaji Bhavan, Besant Nagar,
   Chennai 600 090 (five copies with records)

2. The Secretary,
   Board of Direct Taxes, New Delhi (3 copies)

3. The Commissioner of Income-tax (Appeals)-I,
   Chennai

4. The Commissioner of Income-tax
Tamil Nadu III, Chennai.

5. The Asst.Commissioner of Income Tax
   Central Circle 3(1), Chennai

+ one cc to Mrs. Pushya Sitaraman, Advocate Sr Standing Counsel for IT Department (sr no. 5767)

NM(04.04.2006()

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